

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

**SCOTT SWISHER;
CARRIE SWISHER,**

Plaintiffs,

v.

**NISSAN MOTOR ACCEPTANCE
CORPORATION; RESOLVION,
LLC; ALLSTAR RECOVERY,
LLC,**

Defendants.

**CIVIL ACTION NO.:
4:21-CV-00795-CLM**

ANSWER

COMES NOW the Defendant identified in the Plaintiffs' Complaint as "Resolvion LLC," ("Resolvion" or "Defendant") and for its response and Answer to same, submits the following:

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Resolvion pleads the general issue.

THIRD DEFENSE

Resolvion denies the Plaintiffs' allegations of negligence, wantonness, trespass, violations of the FDCPA, recklessness, invasion of privacy, offensive conduct and/or intentional conduct of any character.

FOURTH DEFENSE

Resolvion asserts that it is not a debt collectors under the FDCPA.

FIFTH DEFENSE

Resolvion asserts that the FDCPA is not applicable in this case.

SIXTH DEFENSE

Resolvion denies that it violated any provision of the FDCPA in any manner or form.

SEVENTH DEFENSE

Resolvion denies that it violated any provision of the FDCPA or any other federal, state or local laws or statutes.

EIGHTH DEFENSE

Resolvion denies that it violated 15 U.S.C. §1692f(6) of the FDCPA in any manner or form.

NINTH DEFENSE

Resolvion asserts that it did not call, send mail to or otherwise interact with Plaintiffs to collect a debt.

TENTH DEFENSE

The Plaintiffs have failed to elect a remedy and their claims are barred by the doctrine of estoppel by election.

ELEVENTH DEFENSE

The damages claimed by the Plaintiffs, if any, were the result of an intervening or superseding cause precluding any liability on the part of Resolvion.

TWELFTH DEFENSE

Resolvion asserts that in the event it is determined to be a debt collector under the FDCPA, any and all failures to comply with the requirements of the FDCPA, which may have occurred and about which Plaintiffs complain, if they occurred, were not intentional but resulted from bona fide error notwithstanding the maintenance of procedures adapted to avoid any such error.

THIRTEENTH DEFENSE

Resolvion asserts that in the event it is determined to be a debt collector under the FDCPA, any and all failures to comply with the requirements of the FDCPA, which may have occurred and about which Plaintiffs complain, if they occurred, the actions taken were made in good faith reliance upon an Advisory Opinion by the Federal Trade Commission.

FOURTEENTH DEFENSE

Resolvion denies that it committed a breach of the peace.

FIFTEENTH DEFENSE

Resolvion denies that it breached any duties owed to Plaintiffs.

SIXTEENTH DEFENSE

Resolvion denies that it negligently, recklessly, wantonly or intentionally interfered, physically or otherwise, with the solitude, seclusion and/or private concerns or affairs of the Plaintiffs or otherwise invade Plaintiffs' privacy.

SEVENTEENTH DEFENSE

Resolvion asserts that it was not attempting to collect a debt as alleged by Plaintiffs.

EIGHTEENTH DEFENSE

Resolvion asserts that the Plaintiffs' claims are barred by the doctrines of *estoppel, collateral estoppel, bankruptcy, accord and satisfaction, release, settlement and release, and res judicata.*

NINETEENTH DEFENSE

Resolvion asserts that the Plaintiffs' claims are barred by the doctrines of *laches, fraud, failure of consideration, unclean hands, estoppel, illegality and waiver.*

TWENTIETH DEFENSE

Resolvion contests the nature and extent of the damages claimed in this matter.

TWENTY-FIRST DEFENSE

Resolvion asserts that Plaintiffs failed to mitigate their damages and their recovery is either limited or barred as a consequence thereof.

TWENTY-SECOND DEFENSE

Resolvion asserts that Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of *set-off, off-set and recoupment*.

TWENTY-THIRD DEFENSE

Resolvion asserts that Plaintiffs' claims are barred by the *parol evidence rule* and *statute of frauds*.

TWENTY-FOURTH DEFENSE

If Plaintiffs sustained any injuries or are entitled to damages under the circumstances alleged in the Complaint, or in any other respect, the negligent and/or intentional acts and omissions of third parties contributed in whole or in part to the damages complained of by the Plaintiffs for which Resolvion cannot be held jointly and severally liable.

TWENTY-FIFTH DEFENSE

Resolvion asserts a lack of privity between them and Plaintiffs.

TWENTY-SIXTH DEFENSE

Resolvion asserts that there is lack of causal relation between their actions and any alleged damages claimed by Plaintiffs.

TWENTY-SEVENTH DEFENSE

Resolvion asserts that Plaintiffs' claims are barred by Plaintiffs' own prior material breach of a contract between Plaintiffs and Exeter.

TWENTY-EIGHTH DEFENSE

Resolvion asserts that Plaintiffs' alleged damages were caused by other efficient intervening or superseding causes that were beyond Resolvion's control and/or responsibility and as such, is not liable.

TWENTY-NINTH DEFENSE

Resolvion pleads the economic loss rule.

THIRTIETH DEFENSE

Resolvion asserts that Plaintiffs' claims for damages caused by emotional distress and mental anguish are barred by Alabama law.

THIRTY-FIRST DEFENSE

Resolvion asserts that its actions were taken in good faith and justified by legitimate motives, purposes and reasons with the absence of malicious intent to injure the Plaintiffs.

THIRTY-SECOND DEFENSE

Resolvion denies that Plaintiffs are entitled to the relief requested in this matter against it.

THIRTY-THIRD DEFENSE

Resolvion contests the nature and extent of the damages claimed by Plaintiffs in this matter.

THIRTY-FOURTH DEFENSE

Any allegation of Plaintiffs' Complaint not specifically admitted in this Answer is denied.

THIRTY-FIFTH DEFENSE

Resolvion denies that it is liable to Plaintiffs for compensatory damages, punitive damages, attorney fees, expenses or fines on the basis of the conduct alleged.

THIRTY-SIXTH DEFENSE

Resolvion asserts that any punitive damage award is impermissible under the excessive fines clause of the Eighth Amendment of the United States Constitution.

THIRTY-SEVENTH DEFENSE

A lack of sufficient standards governing punitive damages awards in Alabama violates the due process clause of the Fourteenth Amendment of the United States Constitution.

THIRTY-EIGHTH DEFENSE

Any demand for punitive damages violates the Fifth Amendment of the United States Constitution that prohibits deprivation of life, liberty, and property

except by due process of law in that the claim for punitive damages is vague and not rationally related to any legitimate governmental interest.

THIRTY-NINTH DEFENSE

Plaintiffs' Complaint, to the extent that it seeks punitive damages, violates Resolvion's right to procedural due process under the Fourteenth Amendment of the United States Constitution and under the Constitution of the State of Alabama, and therefore, fails to state a cause of action upon which punitive damages can be awarded.

FORTIETH DEFENSE

Plaintiffs' Complaint, to the extent that it seeks punitive damages, violates Resolvion's right to protection from "excessive fines" as provided in Article I, Section 15, of the Constitution of the State of Alabama, and violates Resolvion's right to substantive due process as provided in the Constitution of the State of Alabama, and as such, fails to state a cause of action supporting the punitive damages claimed.

FORTY-FIRST DEFENSE

Resolvion asserts that any award of punitive damages to Plaintiffs in this matter will be violative of the general constitutional safe guards provided under the United States Constitution and the Constitution of the State of Alabama.

FORTY-SECOND DEFENSE

Resolvion asserts that Plaintiffs' claims are subject to binding arbitration pursuant to an agreement to arbitrate such claims which is specifically enforceable under the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* Resolvion reserves the right to have Plaintiffs' claims compelled to arbitration through a separately filed motion.

FORTY-THIRD DEFENSE

Resolvion reserves the right to amend this Answer as discovery proceeds in this matter and to assert any other matter constituting an avoidance or affirmative defense pursuant to Rule 8 of the *Federal Rules of Civil Procedure*.

ANSWER

Responding in identically numbered paragraphs to those set forth in the Plaintiffs' Complaint, Resolvion submits the following:

1. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.
2. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.
3. Admitted upon information and belief.
4. Resolvion denies that it is a debt collector as defined by the FDCPA.
5. No response required of this defendant.

JURISDICTION AND VENUE

6. Denied.

ALLEGATIONS

7. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

8. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

9. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

10. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

11. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

12. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

13. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

14. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

15. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

16. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

17. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

18. Resolvion presently lacks knowledge or information sufficient to form a belief as to this averment.

19. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

20. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

21. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

22. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

23. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

24. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

25. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

26. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

27. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

28. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

29. Resolvion denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

COUNT ONE

30. The foregoing is adopted and incorporated by reference as if set forth fully herein.

31. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

32. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

33. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

34. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

COUNT TWO

35. The foregoing is adopted and incorporated by reference as if set forth fully herein.

36. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

37. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

38. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

COUNT THREE

39. The foregoing is adopted and incorporated by reference as if set forth fully herein.

40. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

41. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

42. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

43. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

44. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

COUNT FIVE [SIC]

45. The foregoing is adopted and incorporated by reference as if set forth fully herein.

46. Denied.

47. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

48. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

COUNT SIX [SIC]

49. The foregoing is adopted and incorporated by reference as if set forth fully herein.

50. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

51. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

52. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

53. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

54. Resolvion denies it breached any duty owed to the Plaintiffs and further denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action.

DAMAGES

55. Resolvion denies it breached any duty owed to the Plaintiffs, denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action and denies that the Plaintiffs are entitled to judgment against it.

56. Resolvion denies it breached any duty owed to the Plaintiffs, denies that any act or omission by or on its behalf caused or contributed to cause the damages and/or injuries complained of by the Plaintiffs in this action and denies that the Plaintiffs are entitled to judgment against it.

57. Resolvion denies it breached any duty owed to the Plaintiffs, denies that any act or omission by or on its behalf caused or contributed to cause the damages

and/or injuries complained of by the Plaintiffs in this action and denies that the Plaintiffs are entitled to judgment against it.

Respectfully submitted on this _____ day of August, 2021.

/s/ John W Johnson II
John W Johnson II
Attorney for Defendant Resolvion, LLC

OF COUNSEL:

CHRISTIAN & SMALL LLP
505 20th Street North
Suite 1800
Birmingham, AL 35203
Telephone: (205) 795-6588
Facsimile: (205) 328-7234
jwjohnson@csattorneys.com

CERTIFICATE OF SERVICE

I hereby certify that on **August 11, 2021** I have filed the above and foregoing pleading electronically with the Clerk of Court using the CM/ECF system which will send notification of same to all parties of record, and those not registered with the CM/ECF system have been served at their regular mailing address via U.S. Mail, postage prepaid.

John C. Hubbard
JOHN C. HUBBARD, LLC
P.O. Box 953
Birmingham, AL 35201
jch@jchubbardlaw.com

T. Dylan Reeves
Joseph V. Ronderos
MCGLINCHEY STAFFORD
505 North 20th Street, Suite 800
Birmingham, AL 35203
dreeves@mcglinchey.com
jronderos@mcglinchey.com

Allstar Recovery, LLC
CAPITOL CORPORATE SERVICES INC.
2 North Jackson Street, Suite 605
Montgomery, AL 36104

/s/ John W Johnson II
OF COUNSEL